another bank drawn to his order and indorsed in blank. The defendant placed the full amount to the plaintiff's credit subject to check and the plaintiff drew on it. A month later the defendant sought to charge the amount to the plaintiff's account, on the ground that the check had been lost in the mail. *Held*, that the bank cannot charge it back. *Spooner* v. *Bank of Donalsonville*, 82 S. E. 625 (Ga.).

The nature of the liability of a bank in which a check indorsed in blank is deposited for collection properly depends upon the intent of the parties. Presumptively, however, the transaction should not be regarded as a sale, but rather as an agency, or more accurately, as a trust, since legal title passes by the indorsement. *Scott* v. *Ocean Bank*, 23 N. Y. 289. See 18 HARV. L. REV. 300. Nor is the additional fact that the depositor is allowed to draw against the check at once conclusive of a sale. *Moors* v. *Goddard*, 147 Mass. 287. *Contra*, *Hoffman* v. *First National Bank*, 46 N. J. L. 604. See 13 HARV. L. REV. 416. Under this view, the bank should not be liable for the amount of the check unless itself at fault. Many cases, however, agree with the principal case, and hold the transaction presumptively a sale, at least when credit is given the depositor. *Metropolitan National Bank* v. *Loyd*, 90 N. Y. 530; *Burton* v. *United States*, 196 U. S. 283; *Aebi* v. *Bank of Evansville*, 124 Wis. 73, 102 N. W. 329. A question then arises as to the effect of an arrangement between the parties that the bank may charge back if the check proves uncollectible. Here, too, the courts differ; but many hold that the result is to make the bank a mere agent, and not a debtor. *Fanset* v. *Garden City State Bank*, 24 S. D. 248, 123 N. W. 686; *Davis* v. *Butters Lumber Co.*, 130 N. C. 174, 41 S. E. 95. Properly, however, such an arrangement should not negative what would otherwise be regarded as a sale, for it simply provides a short cut for enforcing the indorsee's rights against the indorser. *Burton* v. *United States*, *supra*; *Aebi* v. *Bank of Evansville*, *supra*. On that construction, an arrangement for charging back in the principal case would leave the transaction still a sale, but the case would not even then be a proper one for the bank to charge the depositor as its indorser.

CARRIERS — PASSENGERS: EJECTION OF PASSENGERS — REFUSAL TO PAY UNLAWFUL FARE. — An electric railway company interpreted the two franchises under which it was operating as authorizing a fare of fifteen cents between two points. The plaintiff, upon refusing to pay more than ten cents to ride this distance, was ejected from a car and sued the company for assault and battery. The court found that upon a proper construction of the franchises ten cents was the maximum lawful fare. *Held*, that the plaintiff may recover. *Raynor* v. *New York & L. I. Traction Co.*, 86 Misc. (N. Y.) 201, 149 N. Y. Supp. 151 (Nassau County Ct.).

At present the authorities tend to decide in favor of the passenger the old conflict concerning a carrier's liability for ejecting a passenger whose failure to produce a proper ticket is the fault of the carrier's agents. See 20 HARV. L. REV. 137. Thus a passenger who has received an invalid ticket or an improper street car transfer may generally recover for his consequent ejection. *New York, L. E. & W. R. Co.* v. *Winter's Adm'r*, 143 U. S. 60; *Murdock* v. *Boston & Albany R. Co.*, 137 Mass. 293. *Contra*, *Norton* v. *Consolidated Ry. Co.*, 79 Conn. 109, 63 Atl. 1087. *Cf. Shelton* v. *Erie R. Co.*, 73 N. J. L. 558, 66 Atl. 403. Again, the weight of authority is that a passenger who has been denied an opportunity to buy a ticket may recover if ejected for refusing to pay the higher cash fare. *Forsee* v. *Alabama G. S. R. Co.*, 63 Miss. 66; *Ammons* v. *Southern Ry. Co.*, 138 N. C. 555, 51 S. E. 127. *Contra*, *Monnier* v. *New York Central & H. R. R. Co.*, 175 N. Y. 281, 67 N. E. 569. In spite of the carrier's primary fault, the real necessity for a regulation requiring the production of tickets, and the possible application of the rule against avoidable damages,

raise serious doubts as to the advisability of giving the passenger any other protection than a recovery for the carrier's original neglect of duty. See 2 WYMAN, PUBLIC SERVICE CORPORATIONS, § 889 *et seq.*; 16 HARV. L. REV. 139. But in any event the result in the principal case is unimpeachable. The resistance here was not to the enforcement of a regulation of the carrier, but to the collection of a fare in excess of that allowed by law. It is well settled that in such a case one may recover for being ejected. *Adams* v. *Union R. Co.*, 21 R. I. 134, 42 Atl. 515.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — RIGHT TO HEAR ADVERSE EVIDENCE IN HEARING BEFORE ADMINISTRATIVE BOARD. — On an appeal to the English Local Government Board, made under the Housing Acts (53 & 54 Vict., c. 70; 9 Edw. VII., c. 44), from a decision refusing to terminate a closing order against a tenement house, the appellant was heard but was refused access to certain adverse reports which the Board had as evidence against him. The Board was given authority to formulate rules of procedure. *Held*, that the appellant had a proper hearing. *Local Government Board* v. *Arlidge*, Weekly Notes, No. 30, p. 328 (House of Lords).

For a discussion of this most important decision and its bearing on the question of the procedure in hearings before administrative boards, see NOTES, p. 198.

DISCOVERY — PRIVILEGE — NOTES OF PREVIOUS LEGAL PROCEEDINGS MADE IN ANTICIPATION OF FUTURE LITIGATION. — In anticipation of further litigation, the defendant had had shorthand notes taken of the proceedings against him by the owner of the taxicab with which his automobile had collided. In an action against the same defendant arising out of the same collision, the plaintiff asks discovery and inspection of the notes in the possession of the defendant. *Held*, that discovery will be ordered. *Lambert* v. *Horne*, 111 L. T. R. 179 (C. A.).

This case is in accord with the great weight of English authority. *Rawstone* v. *Preston Corporation*, 30 Ch. D. 116; *In re Worswick*, 38 Ch. D. 370; *Nicholl* v. *Jones*, 2 H. & M. 588; *Ainsworth* v. *Wilding*, [1900] 2 Ch. D. 315. *Contra*, *Nordon* v. *Defries*, 8 Q. B. D. 508. There is no American authority directly in point, although shorthand notes of proceedings before the grand jury have been held privileged, on the ground that such proceedings are not *publici juris*. *State* v. *Rhoads*, 81 Oh. St. 397, 91 N. E. 186. It is true that the privilege protecting communications between attorney and client covers material collected for submission to a solicitor or information obtained by the solicitor for the purposes of litigation. *Southwark & Vauxhall Water Co.* v. *Quick*, 3 Q. B. D. 315; *Lyell* v. *Kennedy*, 27 Ch. D. 1. But proceedings in open court are in no way privileged or confidential. *In re Worswick*, *supra*; *People* v. *Petersen*, 60 N. Y. App. Div. 118. And since the words themselves are not privileged, the principal case properly orders discovery of a physical reproduction of them, which involved no peculiar skill or knowledge. For the law cannot deal justly between the parties if either has an unfair advantage, and so long as no hard and fast rule of privilege stands in the way, the court should require any disclosures necessary to aid in reaching an equitable result.

DOMICILE — HUSBAND AND WIFE: POSSIBILITY OF SEPARATE DOMICILE. — A wife lived in New York for twenty-six years apart from her husband, who lived outside the state. She had made no attempt to obtain a decree of separation, nor were grounds therefor shown. *Held*, that she had acquired a domicile in New York. *In re Crosby's Estate*, 85 Misc. (N. Y.) 679 (Surr. Ct., N. Y. County).